

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of

AMERICAN AUTOMOBILE ASSOCIATION)	WT Docket No. 10-3
)	
Informal Request for Certification to Provide)	
Frequency Coordination for 800/900 MHz Band)	
Business/Industrial Land Transportation Pool)	
Frequencies)	

To: Chief, Wireless Telecommunications Bureau

**COMMENTS IN OPPOSITION TO AAA REQUEST FOR
CERTIFICATION TO PROVIDE FREQUENCY COORDINATION**

Mobile Relay Associates (“MRA”), by its attorneys and pursuant to the Public Notice, *Wireless Telecommunications Bureau Seeks Comment on Informal Request of American Automobile Association for Certification to Provide Frequency Coordination for 800/900 MHz Business/Industrial Land Transportation Pool Frequencies*, DA 10-5, released January 5, 2010 (“AAA Request Notice”), hereby submits its Comments in opposition to the American Automobile Association (“AAA”) request for certification as a frequency coordinator for B/ILT (“Business/Industrial Land Transportation”) pool frequencies in the 800/900 MHz band (“AAA Request”). As discussed below, based upon the sorry history of AAA’s ridiculously inept efforts as a coordinator of B/ILT pool frequencies in the past, as well as AAA’s continuous refusal to respond to Commission requests and refusal to abide by LMCC consensus standards, AAA is unqualified to act as a frequency coordinator for B/ILT pool frequencies.

STANDING

MRA has standing to oppose the AAA Request. MRA has suffered hundreds of thousands of dollars in damages, not only in terms of attorneys’ fees and coordinator fees, but

also in lost man-hours and diminution in the value of MRA's spectrum holdings, all as a result of AAA's many past defective frequency coordinations in the bands below 512 MHz. MRA is also one of the largest privately-held operators of B/ILT facilities in the United States, as well as a consultant and contractor to many other, smaller B/ILT operators. MRA thus has a major interest in insuring that future B/ILT pool coordinations are conducted properly, in accordance with both Commission rules and LMCC consensus standards.

I. AAA Has Shown Itself Unqualified to Conduct B/ILT Frequency Coordination

A. AAA Has Had More Defective Coordinations in the Past Than All Other Coordinators Combined

A review of contested Part 90 cases over the past ten years reveals that in almost all instances where the Commission has found the frequency coordination defective, the involved frequency coordinator was AAA.¹ Not surprisingly, as a result AAA coordinations have been at the heart of the most contested cases, have required by far the most FCC staff time and effort to address, and have resulted in the most disruption of the overall coordination process. Defective AAA coordinations have required the staff to conduct its own interference studies, correspond with the Land Mobile Communications Council ("LMCC"), which sets the coordination standards, and be diverted from other policy matters. In addition, during the substantial period while litigation over defective AAA coordinations has progressed, the continued existence of such defective coordinations has prevented B/ILT licensees from filing necessary modification applications, thereby disrupting the entire industry.

¹ See table of cases set forth in Exhibit A attached hereto. This table does not include instances where the FCC asked a coordinator to justify an apparently defective coordination and the coordinator, in response, admitted error and rescinded the coordination.

All of this diversion of Commission resources, delay and disruption could have been avoided if AAA had not been certified as a frequency coordinator for B/ILT pool frequencies in other bands.

B. AAA Has a History of Non-Cooperation with Commission Staff

Under Section 332(b) of the Communications Act of 1934 as amended (“Act”), 47 U.S.C. §332(b), a frequency coordinator, once certified by the Commission, acts as the assistant of the Commission, and gatekeeper to prevent improper assignment of frequencies in violation of Commission rules and policies.² Thus, each frequency coordinator’s primary duty is to assist the Commission in ensuring that frequencies are assigned consistent with Commission rules and policies, and to cooperate with the Commission. AAA, however, has a history of obstruction and non-cooperation in its dealings with the Commission.

No one is perfect. A coordinator can make a mistake occasionally (although AAA did make more than all other coordinators combined). However, recognizing their overriding duty to the Commission, other coordinators acknowledge mistakes when they occur, and assist with remedying the error.³ Uniquely among coordinators, AAA has consistently refused to admit error, even when the error is obvious, and even when continued denial of the error amounts to misrepresentation to the Commission staff.

² Section 332(b) says that a frequency coordinator is not to be viewed as an employee of the government, nor subject to governmental regulations pertaining to adjudicatory government employees such as administrative law judges. Nevertheless, that section of the statute specifically says a frequency coordinator is appointed to assist the Commission in performing the Commission’s duties respecting the assignment of frequencies. Thus, the coordinator’s primary duty is to the Commission, to fulfill this specific statutory purpose.

³ See, e.g., *California Mobile Metro Communications, Inc.*, 16 FCC Rcd 15419 (PSPWD, 2001) (PCIA admits defective coordination and supports deletion of improperly-added channel from license).

Thus, for example, in July, 2000, AAA refused to comply with a June 26, 2000 inquiry from the Commission staff asking AAA to document how it had found an application acceptable for filing, including copies of consents from affected licensees. The staff had sent AAA a copy of another coordinator's TSB-88 analysis⁴ showing the AAA-coordinated application unacceptable and impinging on protected licensees. Rather than comply, AAA said it did not keep such records and it was "unreasonable" for the staff to ask AAA to show how the original application had protected pre-existing licensees.⁵

In another case, after AAA had coordinated what appeared to be a patently-defective application, the Commission staff wrote to AAA, asking about the involved coordination and also "for AAA's understanding of the LMCC procedures."⁶ AAA's response disingenuously claimed that LMCC had failed to consider certain potentialities, and finished with "we [AAA] question if the LMCC policy regarding the level of received interference makes sense . . .". *Id.*

In other words, AAA admitted that it had violated the LMCC consensus and knowingly certified an application that would not pass under LMCC consensus standards because AAA should not have to comply with those portions of the LMCC consensus it does not like. AAA also admitted that it had not flagged its decision to ignore the LMCC consensus, but had just decided to falsely certify compliance unless and until it was caught (as it was in that case).

In yet another case, AAA baldly told the FCC staff that AAA had conducted a TSB-88 study showing an absence of harmful interference to protected licensees on behalf of a AAA customer – but did not supply the FCC staff with a copy of that alleged study. Meanwhile, TSB-

⁴ TSB-88 is the LMCC Consensus standard for measuring interference at 470-512 MHz.

⁵ See *National Science and Technology Network, Inc.*, 18 FCC Rcd 11321 (PSPWD, 2003), at ¶¶6-7 & nn. 21-30.

⁶ See *Gary M. Ruark*, (FCC Ref. No. 2004/JTE, released October 29, 2004) (copy of decision attached hereto as Exhibit B) ("*Ruark*"), at p.2.

88 studies supplied to the FCC staff by other coordinators showed the AAA-coordinated applications failed under TSB-88. When the Commission staff conducted its own, independent TSB-88 study, the staff confirmed the AAA-coordinated application failed.⁷

In fact, uniquely among frequency coordinators, AAA never actually supplied the Commission with a TSB-88 study to justify its coordination of an application – AAA always either: a) made a bald statement that it had conducted a TSB-88 study; or b) claimed that notwithstanding the LMCC consensus and the Commission *Public Notice* imposing the LMCC consensus on frequency coordinators, a TSB-88 study was not required. The implication, and the general belief in the B/ILT community was and is that AAA, during the relevant time periods when it was coordinating B/ILT pool applications below 512 MHz, did not even possess the necessary computer software with which to conduct a TSB-88 analysis. Although accused of lying to the Commission about its ability to conduct a TSB-88 analysis, AAA never attempted to defend itself on this point, not even by submitting an actual analysis to the Commission.

Thus, the Commission cannot trust AAA to be truthful with the Commission or to conduct legitimate interference analyses in the future if it were certified as a frequency coordinator for the 800/900 MHz B/ILT pool channels.

C. AAA Is Not an Impartial Actor

AAA claims, AAA Request at unnumbered page 3, that if certified as a frequency coordinator it “would serve not only its affiliated automobile clubs in coordinating 800-900 MHz spectrum, *but any entities eligible in the Industrial Business Pool, . . .*” (Emphasis added.) However, when previously acting as a frequency coordinator for B/ILT pool frequencies, AAA refused to serve any eligible entities in the pool, unless such entities were acceptable to AAA’s

⁷ See *National Science and Technology Network, Inc.*, 22 FCC Rcd 18644 (Mobility Division, 2007).

largest coordination customer, National Science and Technology Network, Inc. (“NSTN”). In particular, when MRA attempted to retain AAA to perform frequency coordination for MRA, AAA, through Gary Ruark, absolutely refused to accept MRA as a coordination customer, on the stated ground that doing so might offend NSTN.⁸ Based upon AAA’s past practice of refusing to accept all eligible entities as coordination customers, there is no basis to credit its bald assertion that it would do so now.

This constitutes an independent basis for denying the AAA Request.

II. AAA’s Proposed Six-Month Record Retention Period Is Ridiculously Short

Perhaps recognizing its past problems, AAA has proposed to conduct a contour analysis to document non-interference to protected licensees, and to maintain that contour analysis for six months after the application is granted by the FCC. Waiver Request, unnumbered page 3. This is not only a far shorter period of time than any other coordinator, it is ridiculously short where, as here, there is no FCC public notice of the filing or grant of an application, and the only procedure for notice to affected licensees is the frequency coordinator’s obligation to notify them and obtain their consent. Especially considering AAA’s numerous past failures to notify affected licensees or obtain their consents (while falsely certifying to the FCC that AAA had in fact done so!), most cases involving defective AAA coordinations are likely to arise much later than that, in the context of a Section 316 modification proceeding.

If AAA falsely certifies that consents were obtained, and a license issues, that licensee has twelve months within which to construct. Prior to construction, there is no way for a pre-existing licensee to know of a defective grant which will impinge upon it. Even after grant, it

⁸ At the time, MRA desired to use AAA as a frequency coordinator because AAA seemed to routinely find an absence of interference to protected licensees when all the other coordinators found interference, thus enabling AAA customers to file applications which could not be filed through any competing coordinator.

will take time for a licensee to identify interference – in the case of temporary base stations, it would take years and years to identify, because there would be no fixed source for the interference. Moreover, even if there were no identifiable interference to transmissions, the defectively-granted license would obstruct the pre-existing licensee from making even the most minor modifications to its pre-existing facilities.⁹

Today, materials can be inexpensively maintained in electronic format. Therefore, if, despite these MRA Comments, the Commission decides to certify AAA as a frequency coordinator anyway, at a minimum the Commission should require AAA to retain all records, including without limitation all contour analyses, for at least ten years post-licensing.

To repeat, if the Commission, despite AAA's lack of qualifications, decides nonetheless to certify AAA anyway, the Commission should require AAA to maintain for at least ten years, and provide to the Commission immediately on request, *all* documentation supporting each coordination, including without limitation both licensee consents and contour analyses. Such records maintenance and cooperation must be a condition to AAA's certification, such that failure by AAA to comply would be grounds for immediate cancellation without hearing of AAA's certification.¹⁰

⁹ The Commission has held that proving actual interference is unnecessary in order to justify modification of a license to delete a defectively-coordinated channel. *See, e.g., California Metro Mobile Communications, Inc.*, 17 FCC Rcd 22974, 22977 (2002), where the full Commission said: "We disagree with [defective licensee]'s suggestion that its license should not be modified unless or until [pre-existing licensee] has complained that its communications have been disrupted."

¹⁰ In other words, AAA's certification would cancel *automatically* upon a Commission finding of non-compliance with the condition, in the same way that a Commission license cancels *automatically* upon a licensee's failure to meet a condition of the license, such as a construction deadline or installment payment obligation.

CONCLUSION

AAA's past performance in the coordination of B/ILT pool frequencies in the bands below 512 MHz was a complete fiasco. AAA conducted more defective coordinations than all other coordinators combined, did not keep records, refused to cooperate with the Commission staff, and almost certainly lied to the Commission and the industry about even possessing the necessary software to conduct interference analyses. The Commission and the industry are still digging out from under the heap of manure created by AAA's past defective coordinations. Therefore, it is contrary to the public interest to certify AAA as a frequency coordinator for B/ILT pool frequencies in the 800/900 MHz band.

Separately, AAA in the past has not been willing to serve all eligible B/ILT pool entities. There is therefore no reason to believe it would do so in the future. Having a frequency coordinator which departs from LMCC consensus standards on behalf of only a few, favored customers creates an unlevel playing field among eligible entities, and is contrary to the public interest.

If, notwithstanding AAA's lack of qualifications, the Commission decided to certify AAA anyway, it must keep AAA on a very short leash. It must require AAA to maintain for at least ten years, and provide to the Commission immediately on request, *all* documentation supporting each coordination, including without limitation both licensee consents and contour analyses. Such records maintenance and cooperation must be a condition to AAA's certification,

such that failure by AAA to comply would be grounds for immediate cancellation without hearing of AAA's certification.

Respectfully submitted,
MOBILE RELAY ASSOCIATES

By: 

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February 4, 2010

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EXHIBIT A

**FCC DECISIONS WHERE A COORDINATOR DID NOT
ADMIT ERROR AND RESCIND COORDINATION, AND
FCC FOUND THE COORDINATION DEFECTIVE**

<u>FCC File No.</u>	<u>Coordinator</u>	<u>FCC Decision</u>
D107400	Unknown	DA 99-2520
D108068	AAA	DA 03-1878
D112885	AAA	DA 07-679
D130079	AAA	DA 07-4113
D133825	AAA	DA 01-2431
D134193	AAA	DA 01-2431
D134194	AAA	DA 01-2431
D134195	AAA	DA 01-2431
D134196	AAA	DA 01-2431
D134197	AAA	DA 01-2431
D134370	AAA	DA 01-2431
D134371	AAA	DA 01-2431
D134372	AAA	DA 01-2431
A000412741	PCIA	DA 01-1991
0000693489	AAA	DA 07-4344
0000795756	AAA	2004/JTE*
0001030124	PCIA	DA 04-3658
0002864440	AAA	DA 07-2815

File numbers with letter characters are pre-ULS.

*Unreported decision, copy attached for convenience.

Comments in Opposition to
AAA Request for Certification to
Provide Frequency Coordination

EXHIBIT B
FCC DECISION, 2004/JTE
(Letter to Gary M. Ruark dated October 29, 2004)



Federal Communications Commission
Washington, D.C. 20554

October 29, 2004

In Reply Refer To:
2004/JTE

Mr. Gary M. Ruark
American Automobile Association
1000 AAA Drive
Heathrow, Florida 32746-5063

Re: AAA Frequency Coordination No. AAA02280205

Dear Mr. Ruark:

This letter responds to your February 20, 2003 letter concerning the above-captioned frequency coordination performed by the American Automobile Association (AAA) for the application of Jose Francis (Francis) for an authorization to operate on frequencies in the 470-512 MHz band. By this letter, we direct AAA to provide the Commission and the other parties to this proceeding with a revised analysis of the best available frequency configuration for the application submitted by Francis.

Background

Francis' application for Station WPUR492, Corona, California, was coordinated by AAA on February 28, 2002 and subsequently granted on April 18, 2002.¹ Francis' license authorizes decentralized trunked operation on frequency pair 508/511.6250 MHz. Under the Commission's Part 90 rules, such operations may be authorized only if the applicant satisfies (1) the loading requirements of Section 90.313 with respect to co-channel licensees² and (2) the coordination consensus of the Land Mobile Communications Council (LMCC), based on interference criteria of TIA/EIA/TSB-88 (TSB-88),³ with respect to adjacent channel licensees.⁴

In 1997, the Commission directed the certified frequency coordinators for the Private Land Mobile Radio Services to reach a consensus on the applicable coordination procedures for the 12.5 kHz "offset" channels.⁵ That consensus is embodied in the LMCC procedures on evaluating adjacent channel

¹ FCC File No. 0000795756.

² See 47 C.F.R. § 90.313.

³ Telecommunications Industry Association / Electronics Industry Association Telecommunications Systems Bulletin 88 (TIA/EIA TSB-88), *Wireline Communications System - Performance in Noise and Interference-Limited Situations - Recommended Methods for Technology-Independent Modeling, Simulation, and Verification* (January 1998).

⁴ See Filing Freeze to be Lifted for Applications Under Part 90 for 12.5 kHz Offset Channels in the 421-430 and 470-512 MHz Bands, *Public Notice*, 13 FCC Rcd 5942 (WTB 1997) (1997 Public Notice).

⁵ See Replacement of Part 90 by Part 88 to Revise the Private Land Mobile Radio Services and Modify the Policies Governing Them and Examination of Exclusivity and Frequency Assignment Policies of the Private Land Mobile Services, PR Docket No. 92-235, *Second Report and Order*, 12 FCC Rcd 14307, 14330-31 ¶ 43 (1997).

interference in the 470-512 MHz band using TSB-88.⁶ The LMCC Consensus states that an application shall not be certified if an incumbent or the *applicant* has unacceptable interference of more than five percent reduction of the calculated service area reliability.⁷

On September 11, 2002, Radio Communications Association (RCA) requested that we initiate a proceeding to revoke the authorization for Station WPUR492.⁸ RCA is the licensee of Station WIK980, which is authorized for wideband operation on a frequency pair and site near Francis' station.⁹ RCA contends that the above-referenced frequency coordination was not in accordance with the LMCC procedures, which limit service area degradation to five percent, because Francis' station will receive a 98.8% reduction of calculated service area reliability from RCA's operations, according to RCA's engineering analysis.¹⁰ On September 19, 2002, Francis opposed the Request,¹¹ stating that the LMCC procedures use a standard of five percent whereas RCA's station will suffer no more than a 0.03% reduction of calculated service area reliability from Francis' operations.¹² With respect to interference from RCA's station to Francis' station, Francis states that he is willing to accept any interference from previously licensed incumbents.¹³

On February 6, 2003, the Wireless Telecommunications Bureau's (WTB) former Public Safety and Private Wireless Division (PS&PWD)¹⁴ sent a letter to AAA asking for additional information regarding the frequency coordination for Francis.¹⁵ In particular, we asked for AAA's understanding of the LMCC procedures. On February 20, 2003, you responded on behalf of AAA and noted, "[l]ooking back when the trunking rules were proposed, we do not believe they were written with the belief that there would be a monitored trunking station class, or it was overlooked. We are not sure at the time the FCC had disclosed the station class definitions, which would make it difficult to write an effective policy. We believe all would now agree that FB6 stations monitor to avoid harmful interference, and we question if the LMCC policy regarding the level of received interference makes sense for a monitored station."¹⁶

⁶ See 1997 Public Notice, 13 FCC Rcd at 5942 (citing Letter dated September 10, 1997, from Larry A. Miller, President, LMCC, to Daniel B. Phythyon, Esq., Acting Chief, Wireless Telecommunications Bureau (LMCC Consensus)).

⁷ See LMCC Consensus, Attachment at 2.

⁸ See Request for Initiation of Revocation Proceeding filed by Radio Communications Association (filed Sept. 11, 2002) (Request). RCA, recognizing that the Commission's Rules do not provide for the submission of requests of this nature, filed it under 47 C.F.R. § 1.41 (Informal requests for Commission action). Request at 1 n.1.

⁹ RCA's station operates on frequency pair 508/511.6375 MHz in Corona, California. The two stations are separated by 12.5 kHz in frequency and by 0.08 km (0.05 mi) in distance.

¹⁰ See Request, Exhibit A. RCA states that its analysis is based on calculations using the methods defined by TSB-88. RCA argues that this degradation renders useless the base portion of Francis' station. See Request at 4.

¹¹ See Letter dated Sept. 19, 2002 from Jose Francis to Magalie Roman Salas, Secretary, Federal Communications Commission (Opposition).

¹² See Request, Exhibit A at 4; Opposition at 1.

¹³ See Opposition at 2.

¹⁴ The Commission reorganized the Wireless Telecommunications Bureau effective November 13, 2003, and the relevant duties of PS&PWD were assumed by the Public Safety and Critical Infrastructure Division. See Reorganization of the Wireless Telecommunications Bureau, Order, 18 FCC Rcd 25414, 25414 ¶ 2 (2003).

¹⁵ See Letter dated Feb. 6, 2003 from D'wana R. Terry, Chief, PS&PWD, WTB, to Gary M. Ruark, AAA.

¹⁶ See Letter dated Feb. 20, 2003 from Gary Ruark, AAA, to D'wana R. Terry, Chief, PS&PWD, WTB.

Mr. Gary M. Ruark

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AAA believed that its recommendation of the frequency pair would not result in interference to incumbents and that Francis would know of any interference by monitoring the channel. AAA also noted that it will abide by the FCC's decision if this matter continues to be contested by RCA.¹⁷

Discussion

Our staff engineers conducted an independent analysis of Francis' application. Based on TSB-88, Francis' station would create less than five percent reduction of calculated service area reliability of adjacent channel Station WIK980. However, our engineers have determined that Francis' station would effectively receive one hundred percent reduction of calculated service area reliability on frequency pair 508/511.6250 MHz from Station WIK980 and other incumbent stations.

In his letter and engineering analysis, Francis argued that RCA's analysis was flawed because it did not consider the effect of multiple incumbents on Francis' station.¹⁸ Francis stated that the incremental reduction of Francis' calculated service area reliability from Station WIK980, on top of the reduction caused by other incumbents, is zero percent. While we find this to be accurate, we note from our independent analysis that all incumbents, not including Station WIK980, cause one hundred percent reduction of Francis' calculated service area reliability. Therefore, adding the effects of Station WIK980 cannot degrade Francis' calculated service area reliability more than one hundred percent. Nevertheless, one hundred percent reduction is in excess of the five percent allowed by the LMCC Consensus.

We conclude that AAA's coordination of Francis' application on frequency pair 508/511.6250 MHz was not in accordance with the LMCC Consensus because Francis will receive greater than five percent reduction in calculated service area reliability from incumbent stations. We believe that Francis' written consent to accept interference from incumbents is not an acceptable exception to the LMCC Consensus. Therefore, AAA's certification of Francis' application was defective.

Under the circumstances presented, we believe it would be appropriate for AAA to indicate whether an alternative frequency pair is available for Francis. AAA must submit the requested information within twenty-one days of the date of this letter to: (1) Mr. Tracy Simmons, Federal Communications Commission, Wireless Telecommunications Bureau, Public Safety and Critical Infrastructure Division, 1270 Fairfield Road, Gettysburg, Pennsylvania 17325-7245, and (2) Mr. Tom Eng, Federal Communications Commission, Wireless Telecommunications Bureau, Public Safety and Critical Infrastructure Division, 445 12th Street, S.W., Washington, D.C. 20554. AAA shall also serve a copy of these materials upon each of the parties copied on this letter. If you have questions regarding this matter, you may contact Mr. Eng at (202) 418-0019.

¹⁷ On March 27, 2003, the LMCC responded to the Division's February 6, 2003 letter to AAA. See Letter dated March 27, 2003 from Larry Miller, President, LMCC, to D'wana R. Terry, Chief, PS&P, WTB. The LMCC indicated that it believed that the LMCC Consensus should be amended to allow an applicant to accept interference degradation of more than five percent from incumbents. On September 10, 2003, the Bureau's former PS&P sent a letter to the LMCC seeking clarification of the amended consensus. See Letter dated Sept. 10, 2003 from D'wana R. Terry, Chief, PS&P, WTB, to Larry Miller, President, LMCC. On October 13, 2003, the LMCC responded that, after further review, the LMCC Consensus should not be amended. On October 30, 2003, we received a letter from counsel for RCA, arguing that the only logical interpretation of the LMCC exchanges is that AAA's coordination did not comply with the original LMCC Consensus. See Letter dated Oct. 30, 2003 from Russell H. Fox, Mintz Levin Cohn Ferris Glovsky and Popeo PC, to Peter J. Daronco, Esq., Deputy Chief, Policy and Rules Branch, PS&P, WTB.

¹⁸ Opposition at 2.

Mr. Gary M. Ruark

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Accordingly, IT IS ORDERED pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and Sections 1.41 and 90.175 of the Commission's Rules, 47 C.F.R. §§ 1.41, 90.175, that the American Automobile Association shall provide the information required by this letter within twenty-one days of the date of this letter.

This action is taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION



Michael J. Wilhelm
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